

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed May 25, 2010. At the time of the Office Action, Claims 39-62 were pending in this Application. Claims 39-62 were rejected. Claims 39 and 49 have been amended. Claims 1-38 were previously cancelled without prejudice. Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 103

Claims 39-62 were rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0193967 filed by Gregg Fenton et al. (“*Fenton*”) in view of U.S. Patent Application Publication No. 2005/0129022 filed by Antonio Mugica et al. (“*Mugica*”).

In order to establish a *prima facie* case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* “Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.* (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on ex post reasoning. *KSR*, 127 S. Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 127 S. Ct. at 1741).

Applicants have amended independent Claims 39 and 49 and respectfully submit that the proposed combination of *Fenton* and *Mugica* does not render obvious the present claims.

For example, the proposed combination of *Fenton* and *Mugica* does not teach at least the following features of amended independent Claim 39:

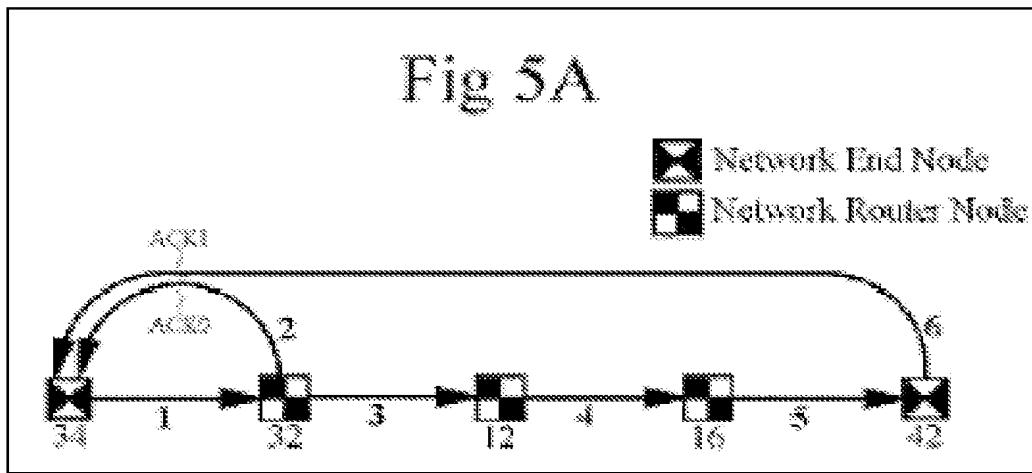
transmitting a message from a first message service provider to a second message service provider, wherein the message contains at least a first header field which includes a reference to a specific network element of the first message service provider, which was involved in processing the message, and

evaluating the message at the second message service provider, and

transmitting, via an interface connecting the first and second message service provider, a confirmation message from the second message service provider addressed directly to the specific network element of the first message service provider as identified by the first header field.

Independent Claim 49 has similar features. Specifically, the proposed combination of *Fenton* and *RFC 822* does not teach *transmitting, via an interface connecting the first and second message service provider, a confirmation message from the second message service provider addressed directly to the specific network element of the first message service provider as identified by the first header field*.

The Examiner correctly notes that *Fenton* does not teach “transmitting a confirmation message from the second network directly, to the specific network element of the first message service provider as identified by the first header field.” Office Action at 3. Instead, the Examiner points to a newly asserted reference, *Mugica*, for that teaching, pointing to Figure 5A (reproduced below) and the associated text.



Applicants concede that *Mugica* discloses the use of an acknowledgement message in a networked environment. That disclosure falls far short of rendering the presently amended claims obvious. *Mugica* discloses two well-known types of acknowledgement messages: 1) a next-node acknowledgement (ACK0 in Fig. 5A), and 2) an endpoint acknowledgement (ACK1 in Fig. 5A). Neither of these types of acknowledgement messages addresses the problem solved by the present disclosure or satisfies the clear claim language, especially as presently amended.

First, neither ACK0 nor ACK1 is *addressed directly to the specific network element of the first message service provider, which was involved in processing the message*. In contrast, ACK0 and ACK1 are both clearly addressed to the originating node, Network End Node 34. Had *Mugica* disclosed an acknowledgement sent to an intermediate node in the transmission chain, then the disclosure would at least be *potentially relevant* to the present claims. Because *Mugica* only discloses these two simplistic forms of acknowledgements, *Mugica* cannot be said to teach *transmitting a confirmation message addressed directly to the specific network element of the first message service provider, which was involved in processing the message*.

Second, *Mugica* does not disclose the presence of an *interface connecting a first and second message provider* through which the directly addressed message is transmitted. Rather, *Mugica* discusses the connection of end nodes 34 and 42 via multiple traditional routers (32, 12, and 16) and relying on first-router and end-node acknowledgements determine whether to retransmit the original message.

As neither of the references in the proposed combination of *Fenton* and *Mugica* teach or suggest each of the claimed features, the combination cannot be said to do so. Therefore, Applicants respectfully request reconsideration and allowance of amended independent Claims 39 and 49; and Claims 38–48 and 50–62, which depend from Claims 39 and 49, respectively.

CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants believe no fees are due; however, should the Commissioner deem that any additional fees are due, including any fees for any additional extensions of time, the Commissioner is hereby authorized to debit said fees from deposit account number 50-4871.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.457-2031.

Respectfully submitted,
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